In the High Court of Judicature at Madras

Dated: 01.03.2006

Coram

The Honourable Mr.JUSTICE P.D.DINAKARAN
and
The Honourable Mr. JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.260 & 261 of 2006
& TCMP No.1284 of 2006

Commissioner of Income Tax
Chennai .... Appellant

Vs.

S.M.Anandvel (HUF) (specified)
17 & 18 Singara Garden IV Street,
Chennai - 600 021. .... Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench dated 02.02.2005 in ITA Nos.74 and 75/Mds/94 for the assessment years 1985-86 and 1986-87 against the order of the Commissioner of Income Tax (Appeals) VIII Madras-34, dt:24.9.93 in ITA.No.18/89-90 CC IV (TMV) against the order of the Commissioner of Income Tax (Appeals) VIII, Madras-34 order dt:24.9.93 in IT Appeal.No.9/89-90 City Circle IV (Inv) against the order of Assistant Commissioner of Income Tax City Circle IV (Inv) Madras against the order of Assistant Commissioner of Income-Tax, City Circle IV (Inv.) Madras-6 dated 27.3.1989 G.I.12202/A/IV(Inv)47-002-HV-0239 IV(Inv) for 1985-86 & 1986-87.

For Appellant : Mrs. Pushya Sitaraman

J U D G M E N T

(Judgment of the Court was delivered by P.D.DINAKARAN,J)

As against the order dated 02.02.2005 in ITA Nos.74&75/Mds/94 for the assessment years 1985-86 and 1986-87 of the Income Tax Appellate Tribunal, the Revenue has preferred these appeals raising the following substantial questions of law:

"1. Whether in the facts and circumstances of the case, the Tribunal was right in not considering the ground raised by the revenue relating to the addition of income from the house property at 100 AE Anna Nagar, Chennai?

2. Whether in the facts and circumstances of the case, the assessee's contention that the property at 100AE Anna Nagar, Chennai did not belongs to him and the same belongs to his wife is acceptable?"

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

2.1. The relevant facts are as follows:

The assessee filed its return of income for the assessment year 1985-86 on 30.9.1985 on a total income of Rs.91,530/-. Subsequently, he filed a revised return of income on 28.3.1988 admitting a total income of Rs.91,755/-. The difference being a sum of Rs.225/- between the original return and revised return represents the interest admitted under the head "Other Sources". In the meanwhile, there was a search under Section 132 of the Income-tax Act (herein after referred to as the 'Act') on 27.1.1986 at the residence of the assessee and some incriminating materials in form of papers and books were seized. Based on those documents, it was found that a site measuring one ground and 825 sq.ft. bearing D.No.AE 100 (formerly AC 100) Anna Nagar, Madras was purchased on 1.5.1981 at a cost of Rs.45,000/- from one Sri Srinivasa Raju Iyengar in the name of Smt. Manomani, wife of the assessee incurring a sum of Rs.6,352/- towards stamp duty and registration charges. Thus the total cost of the plot comes to Rs.51,352/-. Thereafter, in March 1983, a house was constructed in the said plot with the cost of Rs.2,04,274/- inclusive of the cost of wooden almirah. The total built-in area was 1100 sq.ft..

2.2. According to the Revenue, the wife of the assessee, Smt. Manomani did not have any regular source of income and therefore the said land and building, referred to above, was considered to be that of the assessee under Section 22 of the Income Tax Act and thus the income from the said property was computed at Rs.35,354/- after deducting a sum of Rs.1,046/- towards Municipal Tax and Rs.3,600/- towards expenses allowed under Section 23(2) of the Act, taking into consideration that the assessee and his wife were living in 1/3rd portion of the property and 2/3rd portion of the property was let out. The said income was treated as income from house property.

2.3. For the assessment year 1986-87, the assessing officer assessed the total income under the head "Income from house property" at Rs.37,432/- taking into consideration the detailed reasons given in the assessment order for the assessment year 1985-86.

2.4. Aggrieved against the orders of the assessing officer even dated 27.03.1989, the assessee preferred appeals before the Commissioner of Income Tax (Appeals), who taking into account the deletion of rent payment claimed to Smt. Manomani, wife of the assessee with regard to the assessment years 82-83 and 83-84, allowed the appeals for the assessment year 1985-86 and 1986-87 by orders even dated 24.09.1993, which was also confirmed by the Income Tax Appellate Tribunal on appeals at the instance of the Revenue.

3. Not satisfied with the order of the Tribunal dated 02.02.2005, the Revenue has preferred these appeals raising the substantial questions of law, referred supra.

4. Mrs.Pushya Sitaraman, learned counsel appearing for the Revenue, submits that the assessee is the owner of the the impugned property, namely, AE 100, Anna Nagar, Madras, within the meaning of Section 22 of the Act, even though the said property stands in the

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

name of his wife, Smt. Manomani. She further submits that the Tribunal as well as the Commissioner of Income Tax (Appeals) erred in deleting the additions of income from the house property, namely, AE 100, Anna Nagar, Madras in the returns filed by the assessee for the assessment years 1985-86 and 1986-87.

5. From the above facts, it is clear that the first question of law is nothing but in consequence to the second question of law. Even though the owner means a person who has got valid title legally conveyed to him after complying with the requirements of law such as Transfer of Property Act, Registration Act etc. and in the context of Section 22 of the Act, having regard to the object of the Act, namely, to tax the income, the owner is a person, who is entitled to receive income from the property in his own right and also the amount invested in the purchase of plot and construction of a house in the name of the assessee's wife, had come from the assessee and therefore, the income from such property is taxable in the hands of the assessee, since the Tribunal in the instant case rendered a clear finding that the Revenue failed to prove that the said property was purchased by the assessee in the name of his wife, the assessee's wife alone is the real owner, the Commissioner of Income Tax (Appeals) as well as the Tribunal rightly held that the income from the said house property, namely, AE 100, Anna Nagar, Madras is not taxable in the hands of the assessee. The relevant portion of the order of the Tribunal reads as follows:

> "As seen from the order of the lower authorities, the property belonged to the assessee's wife and the payment of rent is not in dispute. The only objection of the Revenue is that the assessee's wife does not have any source of income. It does not mean that the property belongs to the assessee. It is for the Revenue to show that the property was purchased by the assessee in the name of his wife. Unfortunately, the Revenue has no material to show that the property belongs to the assessee. Since the genuineness of the payment is not in dispute, we do not find any infirmity in the order of the lower authority. Accordingly, we confirm the same."

6. In view of the above the concurrent findings of the authorities, that the Revenue failed to prove the genuineness of the payment by the assessee's wife, it cannot be said that the property belongs to the assessee within the meaning of Section 22 of the Act and merely because, the assessee's wife did not have any source of income, which by itself does not mean that the property belongs to the assessee, we do not see any question of law much less substantial question arises for our consideration. Accordingly, both

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the appeals stand dismissed. Consequently, TCMP No.1284 of 2006 is also dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sl

To

1. The Assistant Registrar,Income Tax Appellate Tribunal
   Madras Bench "B" Rajaji Bhavan, Besant Nagar, Chennai-90.
2. The Commissioner of Income Tax (Appeals-VIII), Madras-34
3. The Assistant Commissioner of Income-tax,
   City Circle-IV (Investigation), Madras - 6.

one cc to Mr.Pushya Sitaraman, advocate (SR.No.10069)

T.C.(A) No.260 & 261/06
& TCMP No.1284 of 2006

sky/2/5

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/